ZONING BOARD OF ADJUSTMENT AUGUST 7, 2013 MEETING DRAFT MINUTES

Board members present included Acting Chairman Nicholas Wallner, David Parker, Rob Harrison, James Monahan and James Marshall. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

WBIN Media, Inc.: (Request for Rehearing) (recessed from June) Applicant wishes to re-develop the former Walker School property from an elementary school to a radio/television media facility (use K-10) and requests a Variance to Article 28-6-9(c)(1), Permitted Freestanding Signs, to permit 3 freestanding signs totaling 65 s.f. when 1 freestanding sign of 40 s.f. is permitted, for property located at 4 Church Street and situated in a IS Institutional District with an HI Historic District overlay.

The applicant wishes to have the case continued.

A motion to continue the case until September 2013 was made by Marshall, seconded by Monahan and passed by a unanimous vote.

DRAFT SIGNAGE ORDINANCE DISCUSSION

Mr. Walker discussed the proposed "draft" Sign Ordinance changes. No action is required by the Board, this is for information purposes only. The draft will go to Planning Division for review and then to Council for review before it's actually adopted. The modification pertains to scrolling signs with some activity. This new Ordinance better defines EMC signs.

Marshall asked about the timing of the Ordinance before it is approved. Walker stated it likely was going to the September Council meeting, with public hearing in October unless it goes to Planning and then public hearing in November.

Parker was concerned with what type of signage this would affect. Walker explained it would not permit sigs that would be in conflict with the aesthetics and safety concerns of the City. Harrison asked if under the new Ordinance Cumberland Farm's type of sign that they were requesting would be permitted. (Yes and ADR where required.)

Wallner asked if they should recess the case until the Ordinance passes, if it does. Walker stated that the Board could recommend that action to the applicant as it would preserve the applicant's rights.

Wallner went on to open the cases.

- **21-13** <u>Carolyn A. Parker for VSH Realty, Cumberland Farms</u>: (Request for Rehearing) Applicant wishes to install a scroller type sign and requests Variances to Article 28-7-7, Signs Prohibited Under this Ordinance:
 - 1) Section (a), to permit a sign which has parts and surfaces that physically or visually move when signs that have parts or surfaces that physically move are prohibited,
 - 2) Section (r), to permit an electronically activated changeable message sign (EMC) when EMC signs are prohibited in the City of Concord,

for property at 47 Fisherville Road in a CG General Commercial District.

Attorney F.X. Buxton testified. He did receive a copy of the draft Ordinance today so he hasn't had a chance to talk to his client about it. If the Board doesn't decide in 30 days his rehearing request would be considered denied. Therefore he would like his case continued until the September 2013 meeting

DECISION: A motion to continue this case until the September 2013 meeting was made by Parker, seconded by Harrison and passed by a unanimous vote.

40-13 Barlo Signs for Carlsons Motorcorp: Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 13 Manchester Street in a GWP Gateway Performance District.

This case was heard along with Case #41-13.

41-13 Barlo Signs for Baron's: Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 350 Loudon Road in a GWP Gateway Performance District.

Donald Reed of Barlo Signs testified. He would like to request that the Board continue both of Barlo's cases (40-13 & 41-13) until the September 2013 meeting.

DECISION: A motion to recess the request until the September 2013 meeting was made by Marshall, seconded by Monahan and passed by a unanimous vote.

42-13 Daval Realty Associates LP: Applicant appeals the Zoning Administrator's (ZA) decision that in accordance with Article 28-7-16, Parking and Storage of Unregistered Vehicles, the outdoor storage of motor vehicles at 100 Airport Road is not a conforming (allowed) use unless all vehicles display a current valid number plate or plates, as would be required if operated on the ways of this state, for property at 100 – 104 Airport Road in an IN Industrial Zoning District.

Attorney Richard Uchida and Tracy Banks of Banks Chevrolet testified. Attorney Uchida explained that this is an administrative appeal relative to storage of sales inventory onsite in an IN zone. This is Banks Chevrolet Collision Center property with a combined parcel area of approximately 14.5 acres. There are vehicles stored on site for work to be done at the collision center, which is allowed, there is employees parking their vehicles there and being shuttled to the Manchester Street facility, which is allowed. What the Zoning Administrator is saying is not allowed is the sales inventory - new and used - being stored on the property. There are no sales activities on the site, just excess inventory. This site has a wooded buffer to the north and west (a 17 or 18 acre site) also owned by Banks. The building is approximately 58,000 s.f. which is set back from Airport Road. All vehicles would be stored back behind the building. There would be approximately 550 vehicles; 90 employees, 50 vehicles being worked on and the rest is storage of vehicles. Due to the vehicles not being registered or "plated", the Zoning Administrator is saying it is now an allowed use. The IN zone is a zone where outdoor storage of inventory is permitted by right. The appeal doesn't deal with the storage but the question of if the sales vehicles storage is permitted. The Ordinance deals with 4 kinds of vehicles: unregistered; subject to registered; registered with no plates; registered vehicles with plate. He gave the ZBA a copy of a state Statute that basically says vehicles at Banks Chevrolet are considered registered by State law. If the vehicle is plated it can be placed anywhere within the City. They are registered but not plated. They have "dealer" plates. Banks has 118 dealer plates – the State of NH deems them attached to all the vehicles on the lots. So if deemed by State law prevails, then all vehicles are registered and plated. Attorney Uchida gave the Board a copy of another state Statute regarding plates being required. If the Board agrees, then this will not set precedence. This would only be for dealers and only in the IN Zone.

Tracy Banks testified that this is an important lot for the success of her business.

Parker asked if they are at full capacity on Manchester Street. (Tracy stated that they were.) Monahan asked how long it has been there. (Uchida stated that they were there around 1996. Tracy Banks stated that they have been there since 2003. The collision center has been there 9 years.) Monahan asked about the Saab dealership. (Tracy stated that their entire commercial truck inventory is there for sale.)

Walker stated that when interpreting the ordinance you try to just stick with the plain unambiguous language of the ordinance and do not add words that the authors did not see fit to include. In this case the clear unambiguous language uses the word "attached" and does not include the word "deemed" In his opinion, the intent was for vehicles to have valid number plates attached. Parker asked if he thought the intent was for cars for sale on the street. Walker stated that the Board should look at the broader scope of the Ordinance and that storage uses are usually directly related to the primary use of the property. Walker also stated that Code Administration uses this section of the Ordinance for a broad range of enforcement issues including when dealing with derelict vehicles on private property.

DECISION: Marshall stated that he was intrigued by the State Laws. He feels that the lawyer had a good point. Those cars are registered and have valid number plates based on State Law. He is in favor of overturning the Code Administrator's determination. Monahan felt that he would be more in favor of taking this issue to Council for an Ordinance change.

A motion to uphold the Code Administrator's determination was made by Parker, seconded by Monahan and passed by a 3-2 vote with Harrison and Marshall in the minority.

Daval Realty Associates LP: Applicant requests a Variance to Article 28-7-16, Parking and Storage of Unregistered Vehicles, to permit motor vehicles which are subject to registration under the provisions of RSA 261, Certificates of Title and Registration of Vehicles, if operated on the ways of this state, which do not have a current valid number plates attached, to be stored outside in an area other than a motor vehicle sales area or a recycling center for property at 100 – 104 Airport Road in an IN Industrial Zoning District.

Attorney Richard Uchida along with Tracy Banks and her team of Fred Booth and Bill Jakes testified.

Attorney Uchida submitted photographs and letters. This is for a variance for registered and unplated vehicles. He gave the background of the property. The information is basically same as the previous case. They have 450 + vehicles continually stored there. Where the vehicles are being stored is well setback from the road. He explained the site layout. There are NO vehicles parking on the Airport Road front yard and NO vehicles parking on the Terrill Park Road front yard. In the surrounding area their is plane storage, boat storage and auto repair facilities. There are parking lots in the area and storage is prevalent in the neighborhood. They are not altering the character of the neighborhood. Tracy Banks bought the property and turned it into the collision center. They have over 200 employees. Chevrolet, Cadillac, Buick and GMC's are all there. They area at full capacity at the Manchester Street site and need this site for storage.

Bill Jakes stated that in July they delivered at retail 380 cars with 20 day plates. Manchester Street property has 525 to 550 vehicles for sale. Normally they keep 1000 vehicles, used and new, in stock. Due to the sales volume, they need to restock daily.

Uchida submitted letters in favor of the application. He also spoke with Maureen and Wayne Kimball who own residential property near them on Airport Road. They live in FL and were not able to make it, but asked him to let the Board know that they were in favor. This is a unique parcel. The size, buffers and screening make it so as well as ample setbacks. This is a reasonable use. The proximity to their dealership is good. The big carrier vehicles come here due to the traffic on Manchester Street to off load vehicles. This helps the public safety on Manchester Street. He feels they meet the hardship element. The neighbors concur.

In favor: letters from Helmut Koch, President of HKH Associates, 99 Airport Road; John Lyons, President of Air Distribution Corporation, 106 Airport Road; Jeffrey K. Towle, President Davis & Towle Group, 115 Airport Road; and Peter E. Cook, CEO Concord Litho, 92 Old Turnpike Road.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve the request was made by Parker, seconded by Harrison and passed by a 4-1 vote with Monahan in the minority. Parker felt it was an appropriate request. There is no opposition from the neighborhood. There is a large buffer. They can add to the buffer with site plan review. Marshall agrees with Parker and literal enforcement of the Ordinance creates a hardship. They could do this if they had license plates for all vehicles. Monahan dissented and expressed his feeling that perhaps the proper course of action would be to modify the Ordinance.

44-13 Bindery Redevelopment, LLC: Applicant requests a modification to a previously granted Variance to Article 28-6-9(b) under Case #28-13 to permit up to 9 building signs to now permit up to 11 building signs where a maximum of 3 signs per tenant frontage and 1 tenant sign would otherwise be permitted for property at 43 South Main Street in a CBP Central Business Performance District.

Attorney Uchida testified. In June 2013 they came before the Board. He asked for 11 signs as shown in the drawings but when he filed the application he only had 9 signs on the application instead of the 11. He is here to correct his error of the number of signs approved in June 2013. Mr. Uchida explained the actual number of signs is 10 plus 1 address plaque.

DECISION: A motion to approve the request was made by Harrison, seconded by Monahan and passed by a 4-0 with Parker abstaining.

MINUTES: A motion to approve the July Minutes was made by Parker, seconded by Monahan and passed by a 3-0 vote.

Meeting Adjourned.	
A TRUE RECORD ATTEST,	
ZONING BOARD OF ADJUSTMENT	_, CLERK